

§ 64.3003

(c) Where neither a PSAP nor a statewide default answering point has been designated, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to an appropriate local emergency authority, within nine months of a request by the State or locality.

(d) Where no PSAP nor statewide default answering point has been designated, and no appropriate local emergency authority has been selected by an authorized state or local entity, telecommunications carriers shall identify an appropriate local emergency authority, based on the exercise of reasonable judgment, and complete all translation and routing necessary to deliver 911 calls to such appropriate local emergency authority no later than September 11, 2002.

(e) Once a PSAP is designated for an area where none had existed as of December 11, 2001, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to that PSAP within nine months of that designation.

§ 64.3003 Obligation for providing a permissive dialing period.

Upon completion of translation and routing of 911 calls to a PSAP, a statewide default answering point, to an appropriate local emergency authority, or, where no PSAP nor statewide default answering point has been designated and no appropriate local emergency authority has been selected by an authorized state or local entity, to an appropriate local emergency authority, identified by a telecommunications carrier based on the exercise of reasonable judgment, the telecommunications carrier shall provide permissive dialing between 911 and any other seven- or ten-digit emergency number or an abbreviated dialing code other than 911 that the public has previously used to reach emergency service providers until the appropriate State or local jurisdiction determines to phase out the use of such seven- or ten-digit number entirely and use 911 exclusively.

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§ 64.3004 Obligation for providing an intercept message.

Upon termination of permissive dialing, as provided under § 64.3003, telecommunications carriers shall provide a standard intercept message announcement that interrupts calls placed to the emergency service provider using either a seven- or ten-digit emergency number or an abbreviated dialing code other than 911 and informs the caller of the dialing code change.

Subpart BB—Restrictions on Unwanted Mobile Commercial Service Messages

AUTHORITY: 15 U.S.C. 7701–7713, Public Law 108–187, 117 Stat. 2699.

§ 64.3100 Restrictions on mobile service commercial messages.

(a) No person or entity may initiate any mobile service commercial message, as those terms are defined in paragraph (c)(7) of this section, unless:

(1) That person or entity has the express prior authorization of the addressee;

(2) That person or entity is forwarding that message to its own address;

(3) That person or entity is forwarding to an address provided that

(i) The original sender has not provided any payment, consideration or other inducement to that person or entity; and

(ii) That message does not advertise or promote a product, service, or Internet website of the person or entity forwarding the message; or

(4) The address to which that message is sent or directed does not include a reference to a domain name that has been posted on the FCC's wireless domain names list for a period of at least 30 days before that message was initiated, provided that the person or entity does not knowingly initiate a mobile service commercial message.

(b) Any person or entity initiating any mobile service commercial message must:

(1) Cease sending further messages within ten (10) days after receiving such a request by a subscriber;

(2) Include a functioning return electronic mail address or other Internet-based mechanism that is clearly and conspicuously displayed for the purpose of receiving requests to cease the initiating of mobile service commercial messages and/or commercial electronic mail messages, and that does not require the subscriber to view or hear further commercial content other than institutional identification;

(3) Provide to a recipient who electronically grants express prior authorization to send commercial electronic mail messages with a functioning option and clear and conspicuous instructions to reject further messages by the same electronic means that was used to obtain authorization;

(4) Ensure that the use of at least one option provided in paragraphs (b)(2) and (b)(3) of this section does not result in additional charges to the subscriber;

(5) Identify themselves in the message in a form that will allow a subscriber to reasonably determine that the sender is the authorized entity; and

(6) For no less than 30 days after the transmission of any mobile service commercial message, remain capable of receiving messages or communications made to the electronic mail address, other Internet-based mechanism or, if applicable, other electronic means provided by the sender as described in paragraph (b)(2) and (b)(3) of this section.

(c) *Definitions.* For the purpose of this subpart:

(1) *Commercial Mobile Radio Service Provider* means any provider that offers the services defined in 47 CFR Section 20.9.

(2) *Commercial electronic mail message* means the term as defined in the CAN SPAM Act, 15 U.S.C. Section 7702. The term is defined as “an electronic message for which the primary purpose is commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).” The term “commercial electronic mail message” does not include a transactional or relationship message.

(3) *Domain name* means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry,

or other domain name registration authority as part of an electronic address on the Internet.

(4) *Electronic mail address* means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox and a reference to an Internet domain, whether or not displayed, to which an electronic mail message can be sent or delivered.

(5) *Electronic mail message* means a message sent to a unique electronic mail address.

(6) *Initiate*, with respect to a commercial electronic mail message, means to originate or transmit such messages or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than one person may be considered to have initiated a message. “Routine conveyance” means the transmission, routing, relaying, handling, or storing, through an automatic technical process, or an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(7) *Mobile Service Commercial Message* means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of a commercial mobile service (as such term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) in connection with such service. A commercial message is presumed to be a mobile service commercial message if it is sent or directed to any address containing a reference, whether or not displayed, to an Internet domain listed on the FCC’s wireless domain names list. The FCC’s wireless domain names list will be available on the FCC’s website and at the Commission headquarters, 445 12th St., SW., Washington, DC 20554.

(8) *Transactional or relationship message* means any electronic mail message the primary purpose of which is:

(i) To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) To provide warranty information, product recall information, or safety or

security information with respect to a commercial product or service used or purchased by the recipient;

(iii) To provide:

(A) Notification concerning a change in the terms or features of;

(B) Notification of a change in the recipient's standing or status with respect to; or

(C) At regular periodic intervals, account balance information or other type of account statement with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(D) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(E) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(d) *Express Prior Authorization* may be obtained by oral or written means, including electronic methods.

(1) Written authorization must contain the subscriber's signature, including an electronic signature as defined by 15 U.S.C. 7001 (E-Sign Act).

(2) All authorizations must include the electronic mail address to which mobile service commercial messages can be sent or directed. If the authorization is made through a website, the website must allow the subscriber to input the specific electronic mail address to which commercial messages may be sent.

(3) Express Prior Authorization must be obtained by the party initiating the mobile service commercial message. In the absence of a specific request by the subscriber to the contrary, express prior authorization shall apply only to the particular person or entity seeking the authorization and not to any affiliated entities unless the subscriber expressly agrees to their being included in the express prior authorization.

(4) Express Prior Authorization may be revoked by a request from the sub-

scriber, as noted in paragraph (b)(2) and (b)(3) of this section.

(5) All requests for express prior authorization must include the following disclosures:

(i) That the subscriber is agreeing to receive mobile service commercial messages sent to his/her wireless device from a particular sender. The disclosure must state clearly the identity of the business, individual, or other entity that will be sending the messages;

(ii) That the subscriber may be charged by his/her wireless service provider in connection with receipt of such messages; and

(iii) That the subscriber may revoke his/her authorization to receive MSCMs at any time.

(6) All notices containing the required disclosures must be clearly legible, use sufficiently large type or, if audio, be of sufficiently loud volume, and be placed so as to be readily apparent to a wireless subscriber. Any such disclosures must be presented separately from any other authorizations in the document or oral presentation. If any portion of the notice is translated into another language, then all portions of the notice must be translated into the same language.

(e) All CMRS providers must identify all electronic mail domain names used to offer subscribers messaging specifically for wireless devices in connection with commercial mobile service in the manner and time-frame described in a public notice to be issued by the Consumer & Governmental Affairs Bureau.

(f) Each CMRS provider is responsible for the continuing accuracy and completeness of information furnished for the FCC's wireless domain names list. CMRS providers must:

(1) File any future updates to listings with the Commission not less than 30 days before issuing subscribers any new or modified domain name;

(2) Remove any domain name that has not been issued to subscribers or is no longer in use within 6 months of placing it on the list or last date of use; and

(3) Certify that any domain name placed on the FCC's wireless domain names list is used for mobile service messaging.

[69 FR 55779, Sept. 16, 2004]

EFFECTIVE DATE NOTE: At 69 FR 55779, Sept. 16, 2004, §64.3100 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

APPENDIX A TO PART 64—TELECOMMUNICATIONS SERVICE PRIORITY (TSP) SYSTEM FOR NATIONAL SECURITY EMERGENCY PREPAREDNESS (NSEP)

1. Purpose and Authority

a. This appendix establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. The NSEP TSP System authorizes priority treatment to certain domestic telecommunications services (including portions of U.S. international telecommunication services provided by U.S. service vendors) for which provisioning or restoration priority (RP) levels are requested, assigned, and approved in accordance with this appendix.

b. This appendix is issued pursuant to sections 1, 4(i), 201 through 205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201 through 205 and 303(r). These sections grant to the Federal Communications Commission (FCC) the authority over the assignment and approval of priorities for provisioning and restoration of common carrier-provided telecommunications services. Under section 706 of the Communications Act, this authority may be superseded, and expanded to include non-common carrier telecommunication services, by the war emergency powers of the President of the United States. This appendix provides the Commission's Order to telecommunication service vendors and users to comply with policies and procedures establishing the NSEP TSP System, until such policies and procedures are superseded by the President's war emergency powers. This appendix is intended to be read in conjunction with regulations and procedures that the Executive Office of the President issues (1) to implement responsibilities assigned in section 6(b) of this appendix, or (2) for use in the event this appendix is superseded by the President's war emergency powers.

c. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priorities for provisioning and restoration of NSEP telecommunication services both before and after invocation of the President's war emergency powers. In order that government and industry resources may be used effectively under all conditions, a single set of rules, regulations, and procedures is necessary, and they must be applied on a day-to-day basis to all NSEP services so

that the priorities they establish can be implemented at once when the need arises.

*In sections 2(a)(2) and 2(b)(2) of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions" April 3, 1984 (49 FR 13471 (1984)), the President assigned to the Director, Office of Science and Technology Policy, certain NSEP telecommunication resource management responsibilities. The term "Executive Office of the President" as used in this appendix refers to the official or organization designated by the President to act on his behalf.

2. Applicability and Revocation

a. This appendix applies to NSEP telecommunications services:

(1) For which initial or revised priority level assignments are requested pursuant to section 8 of this appendix.

(2) Which were assigned restoration priorities under the provision of FCC Order 80-581; 81 FCC 2d 441 (1980); 47 CFR part 64, appendix A, "Priority System for the Restoration of Common Carrier Provided Intercity Private Line Services"; and are being resubmitted for priority level assignments pursuant to section 10 of this appendix. (Such services will retain assigned restoration priorities until a resubmission for a TSP assignment is completed or until the existing RP rules are terminated.)

b. FCC Order 80-581 will continue to apply to all other intercity, private line circuits assigned restoration priorities thereunder until the fully operating capability date of this appendix, 30 months after the initial operating capability date referred to in subsection d of this section.

c. In addition, FCC Order, "Precedence System for Public Correspondence Services Provided by the Communications Common Carriers" (34 FR 17292 (1969)); (47 CFR part 64, appendix B), is revoked as of the effective date of this appendix.

d. The initial operating capability (IOC) date for NSEP TSP will be nine months after release in the FEDERAL REGISTER of the FCC's order following review of procedures submitted by the Executive Office of the President. On this IOC date requests for priority assignments generally will be accepted only by the Executive Office of the President.

3. Definitions

As used in this part:

a. *Assignment* means the designation of priority level(s) for a defined NSEP telecommunications service for a specified time period.

b. *Audit* means a quality assurance review in response to identified problems.

c. *Government* refers to the Federal government or any foreign, state, county, municipal or other local government agency or organization. Specific qualifications will be supplied whenever reference to a particular level of government is intended (e.g., “Federal government”, “state government”). “Foreign government” means any sovereign empire, kingdom, state, or independent political community, including foreign diplomatic and consular establishments and coalitions or associations of governments (e.g., North Atlantic Treaty Organization (NATO), Southeast Asian Treaty Organization (SEATO), Organization of American States (OAS), and government agencies or organization (e.g., Pan American Union, International Postal Union, and International Monetary Fund)).

d. *National Communications System (NCS)* refers to that organization established by the President in Executive Order No. 12472, “Assignment of National Security and Emergency Preparedness Telecommunications Functions,” April 3, 1984, 49 FR 13471 (1984).

e. *National Coordinating Center (NCC)* refers to the joint telecommunications industry-Federal government operation established by the National Communications System to assist in the initiation, coordination, restoration, and reconstitution of NSEP telecommunication services or facilities.

f. *National Security Emergency Preparedness (NSEP)* telecommunications services, or “NSEP services,” means telecommunication services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States. These services fall into two specific categories, Emergency NSEP and Essential NSEP, and are assigned priority levels pursuant to section 9 of this appendix.

g. *NSEP treatment* refers to the provisioning of a telecommunication service before others based on the provisioning priority level assigned by the Executive Office of the President.

h. *Priority action* means assignment, revision, revocation, or revalidation by the Executive Office of the President of a priority level associated with an NSEP telecommunications service.

i. *Priority level* means the level that may be assigned to an NSEP telecommunications service specifying the order in which provisioning or restoration of the service is to occur relative to other NSEP and/or non-NSEP telecommunication services. Priority levels authorized by this appendix are designated (highest to lowest) “E,” “1,” “2,” “3,” “4,” and “5,” for provisioning and “1,” “2,” “3,” “4,” and “5,” for restoration.

j. *Priority level assignment* means the priority level(s) designated for the provisioning and/or restoration of a particular NSEP telecommunications service under section 9 of this appendix.

k. *Private NSEP telecommunications services* include non-common carrier telecommunications services including private line, virtual private line, and private switched network services.

l. *Provisioning* means the act of supplying telecommunications service to a user, including all associated transmission, wiring and equipment. As used herein, “provisioning” and “initiation” are synonymous and include altering the state of an existing priority service or capability.

m. *Public switched NSEP telecommunications services* include those NSEP telecommunications services utilizing public switched networks. Such services may include both interexchange and intraexchange network facilities (e.g., switching systems, interoffice trunks and subscriber loops).

n. *Reconciliation* means the comparison of NSEP service information and the resolution of identified discrepancies.

o. *Restoration* means the repair or returning to service of one or more telecommunication services that have experienced a service outage or are unusable for any reason, including a damaged or impaired telecommunications facility. Such repair or returning to service may be done by patching, rerouting, substitution of component parts or pathways, and other means, as determined necessary by a service vendor.

p. *Revalidation* means the rejustification by a service user of a priority level assignment. This may result in extension by the Executive Office of the President of the expiration date associated with the priority level assignment.

q. *Revision* means the change of priority level assignment for an NSEP telecommunications service. This includes any extension of an existing priority level assignment to an expanded NSEP service.

r. *Revocation* means the elimination of a priority level assignment when it is no longer valid. All priority level assignments for an NSEP service are revoked upon service termination.

s. *Service identification* refers to the information uniquely identifying an NSEP telecommunications service to the service vendor and/or service user.

t. *Service user* refers to any individual or organization (including a service vendor) supported by a telecommunications service for which a priority level has been requested or assigned pursuant to section 8 or 9 of this appendix.

u. *Service vendor* refers to any person, association, partnership, corporation, organization, or other entity (including common carriers and government organizations) that offers to supply any telecommunications equipment, facilities, or services (including customer premises equipment and wiring) or combination thereof. The term includes resale carriers, prime contractors, subcontractors, and interconnecting carriers.

v. *Spare circuits or services* refers to those not being used or contracted for by any customer.

w. *Telecommunication services* means the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, visual or other electronic, electric, electromagnetic, or acoustically coupled means, or any combination thereof. The term can include necessary telecommunication facilities.

x. *Telecommunications Service Priority (TSP) system user* refers to any individual, organization, or activity that interacts with the NSEP TSP System.

4. Scope

a. *Domestic NSEP services.* The NSEP TSP System and procedures established by this appendix authorize priority treatment to the following domestic telecommunication services (including portions of U.S. international telecommunication services provided by U.S. vendors) for which provisioning or restoration priority levels are requested, assigned, and approved in accordance with this appendix:

- (1) Common carrier services which are:
 - (a) Interstate or foreign telecommunications services,
 - (b) Intrastate telecommunication services inseparable from interstate or foreign telecommunications services, and intrastate telecommunication services to which priority levels are assigned pursuant to section 9 of this appendix.

NOTE: Initially, the NSEP TSP System's applicability to public switched services is limited to (a) provisioning of such services (e.g., business, centrex, cellular, foreign exchange, Wide Area Telephone Service (WATS) and other services that the selected vendor is able to provision) and (b) restoration of services that the selected vendor is able to restore.

- (2) Services which are provided by government and/or non-common carriers and are interconnected to common carrier services assigned a priority level pursuant to section 9 of this appendix.

b. *Control services and orderwires.* The NSEP TSP System and procedures established by this appendix are not applicable to authorize priority treatment to control services or orderwires owned by a service vendor and

needed for provisioning, restoration, or maintenance of other services owned by that service vendor. Such control services and orderwires shall have priority provisioning and restoration over all other telecommunication services (including NSEP services) and shall be exempt from preemption. However, the NSEP TSP System and procedures established by this appendix are applicable to control services or orderwires leased by a service vendor.

c. *Other services.* The NSEP TSP System may apply, at the discretion of and upon special arrangements by the NSEP TSP System users involved, to authorize priority treatment to the following telecommunication services:

- (1) Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level pursuant to section 9 of this appendix.
- (2) Portions of U.S. international services which are provided by foreign correspondents. (U.S. telecommunication service vendors are encouraged to ensure that relevant operating arrangements are consistent to the maximum extent practicable with the NSEP TSP System. If such arrangements do not exist, U.S. telecommunication service vendors should handle service provisioning and/or restoration in accordance with any system acceptable to their foreign correspondents which comes closest to meeting the procedures established in this appendix.)

5. Policy

The NSEP TSP System is the regulatory, administrative, and operational system authorizing and providing for priority treatment, *i.e.*, provisioning and restoration, of NSEP telecommunication services. As such, it establishes the framework for telecommunication service vendors to provision, restore, or otherwise act on a priority basis to ensure effective NSEP telecommunication services. The NSEP TSP System allows the assignment of priority levels to any NSEP service across three time periods, or stress conditions: Peacetime/Crisis/Mobilizations, Attack/War, and Post-Attack/Recovery. Although priority levels normally will be assigned by the Executive Office of the President and retained by service vendors only for the current time period, they may be pre-assigned for the other two time periods at the request of service users who are able to identify and justify in advance, their wartime or post-attack NSEP telecommunication requirements. Absent such pre-assigned priority levels for the Attack/War and Post-Attack/Recovery periods, priority level assignments for the Peacetime/Crisis/Mobilization period will remain in effect. At all times, priority level assignments will be subject to revision by the FCC or (on an interim basis) the Executive Office of the President, based upon changing NSEP needs.

No other system of telecommunication service priorities which conflicts with the NSEP TSP System is authorized.

6. Responsibilities

a. The FCC will:

(1) Provide regulatory oversight of implementation of the NSEP TSP System.

(2) Enforce NSEP TSP System rules and regulations, which are contained in this appendix.

(3) Act as final authority for approval, revision, or disapproval of priority actions by the Executive Office of the President and adjudicate disputes regarding either priority actions or denials of requests for priority actions by the Executive Office of the President, until superseded by the President's war emergency powers under section 706 of the Communications Act.

(4) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 6(c) below.)

b. The Executive Office of the President will:

(1) During exercise of the President's war emergency powers under section 706 of the Communications Act, act as the final approval authority for priority actions or denials of requests for priority actions, adjudicating any disputes.

(2) Until the exercise of the President's war emergency powers, administer the NSEP TSP System which includes:

(a) Receiving, processing, and evaluating requests for priority actions from service users, or sponsoring Federal government organizations on behalf of service users (e.g., Department of State or Defense on behalf of foreign governments, Federal Emergency Management Agency on behalf of state and local governments, and any Federal organization on behalf of private industry entities). Action on such requests will be completed within 30 days of receipt.

(b) Assigning, revising, revalidating, or revoking priority levels as necessary or upon request of service users concerned, and denying requests for priority actions as necessary, using the categories and criteria specified in section 12 of this appendix. Action on such requests will be completed within 30 days of receipt.

(c) Maintaining data on priority level assignments.

(d) Periodically forwarding to the FCC lists of priority actions by the Executive Office of the President for review and approval.

(e) Periodically initiating reconciliation.

(f) Testing and evaluating the NSEP TSP System for effectiveness.

(g) Conducting audits as necessary. Any Telecommunications Service Priority (TSP) System user may request the Executive Office of the President to conduct an audit.

(h) Issuing, subject to review by the FCC, regulations and procedures supplemental to

and consistent with this appendix regarding operation and use of the NSEP TSP System.

(i) Serving as a centralized point-of-contact for collecting and disseminating to all interested parties (consistent with requirements for treatment of classified and proprietary material) information concerning use and abuse of the NSEP TSP System.

(j) Establishing and assisting a TSP System Oversight Committee to identify and review any problems developing in the system and recommend actions to correct them or prevent recurrence. In addition to representatives of the Executive Office of the President, representatives from private industry (including telecommunication service vendors), state and local governments, the FCC, and other organizations may be appointed to that Committee.

(k) Reporting at least quarterly to the FCC and TSP System Oversight Committee, together with any recommendations for action, the operational status of and trends in the NSEP TSP System, including:

(i) Numbers of requests processed for the various priority actions, and the priority levels assigned.

(ii) Relative percentages of services assigned to each priority level under each NSEP category and subcategory.

(iii) Any apparent serious misassignment or abuse of priority level assignments.

(iv) Any existing or developing problem.

(l) Submitting semi-annually to the FCC and TSP System Oversight Committee a summary report identifying the time and event associated with each invocation of NSEP treatment under section 9(c) of this appendix, whether the NSEP service requirement was adequately handled, and whether any additional charges were incurred. These reports will be due by April 30th for the preceding July through December and by October 31 for the preceding January through June time periods.

(m) All reports submitted to the FCC should be directed to Chief, Wireline Competition Bureau, Washington, DC 20554.

(3) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 6(c) below.)

c. Sponsoring Federal organizations will:

(1) Review and decide whether to sponsor foreign, state, and local government and private industry (including telecommunication service vendors) requests for priority actions. Federal organizations will forward sponsored requests with recommendations for disposition to the Executive Office of the President. Recommendations will be based on the categories and criteria in section 12 of this appendix.

(2) Forward notification of priority actions or denials of requests for priority actions from the Executive Office of the President to the requesting foreign, state, and local government and private industry entities.

(3) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.

(4) Comply with any regulations and procedures supplemental to and consistent with this appendix which are issued by the Executive Office of the President.

d. Service users will:

(1) Identify services requiring priority level assignments and request and justify priority level assignments in accordance with this appendix and any supplemental regulations and procedures issued by the Executive Office of the President that are consistent with this appendix.

(2) Request and justify revalidation of all priority level assignments at least every three years.

(3) For services assigned priority levels, ensure (through contractual means or otherwise) availability of customer premises equipment and wiring necessary for end-to-end service operation by the service due date, and continued operation; and, for such services in the Emergency NSEP category, by the time that vendors are prepared to provide the services. Additionally, designate the organization responsible for the service on an end-to-end basis.

(4) Be prepared to accept services assigned priority levels by the service due dates or, for services in the Emergency NSEP category, when they are available.

(5) Pay vendors any authorized costs associated with services that are assigned priority levels.

(6) Report to vendors any failed or unusable services that are assigned priority levels.

(7) Designate a 24-hour point-of-contact for matters concerning each request for priority action and apprise the Executive Office of the President thereof.

(8) Upon termination of services that are assigned priority levels, or circumstances warranting revisions in priority level assignment (e.g., expansion of service), request and justify revocation or revision.

(9) When NSEP treatment is invoked under section 9(c) of this appendix, within 90 days following provisioning of the service involved, forward to the National Coordinating Center (see section 3(e) of this appendix) complete information identifying the time and event associated with the invocation and regarding whether the NSEP service requirement was adequately handled and whether any additional charges were incurred.

(10) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.

(11) Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President.

e. Non-federal service users, in addition to responsibilities prescribed above in section

6(d), will obtain a sponsoring Federal organization for all requests for priority actions. If unable to find a sponsoring Federal organization, a non-federal service user may submit its request, which must include documentation of attempts made to obtain a sponsor and reasons given by the sponsor for its refusal, directly to the Executive Office of the President.

f. Service vendors will:

(1) When NSEP treatment is invoked by service users, provision NSEP telecommunication services before non-NSEP services, based on priority level assignments made by the Executive Office of the President. Provisioning will require service vendors to:

(a) Allocate resources to ensure best efforts to provide NSEP services by the time required. When limited resources constrain response capability, vendors will address conflicts for resources by:

(i) Providing NSEP services in order of provisioning priority level assignment (i.e., "E", "1", "2", "3", "4", or "5");

(ii) Providing Emergency NSEP services (i.e., those assigned provisioning priority level "E") in order of receipt of the service requests;

(iii) Providing Essential NSEP services (i.e., those assigned priority levels "1", "2", "3", "4", or "5") that have the same provisioning priority level in order of service due dates; and

(iv) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Executive Office of the President for resolution.

(b) Comply with NSEP service requests by:

(i) Allocating resources necessary to provide Emergency NSEP services as soon as possible, dispatching outside normal business hours when necessary;

(ii) Ensuring best efforts to meet requested service dates for Essential NSEP services, negotiating a mutually (customer and vendor) acceptable service due date when the requested service due date cannot be met; and

(iii) Seeking National Coordinating Center (NCC) assistance as authorized under the NCC Charter (see section 1.3, NCC Charter, dated October 9, 1985).

(2) Restore NSEP telecommunications services which suffer outage, or are reported as unusable or otherwise in need of restoration, before non-NSEP services, based on restoration priority level assignments. (NOTE: For broadband or multiple service facilities, restoration is permitted even though it might result in restoration of services assigned no or lower priority levels along with, or sometimes ahead of, some higher priority level services.) Restoration will require service vendors to restore NSEP services in order of restoration priority level assignment (i.e., "1", "2", "3", "4", or "5") by:

(a) Allocating available resources to restore NSEP services as quickly as practicable, dispatching outside normal business hours to restore services assigned priority levels “1”, “2”, and “3” when necessary, and services assigned priority level “4” and “5” when the next business day is more than 24 hours away;

(b) Restoring NSEP services assigned the same restoration priority level based upon which can be first restored. (However, restoration actions in progress should not normally be interrupted to restore another NSEP service assigned the same restoration priority level);

(c) Patching and/or rerouting NSEP services assigned restoration priority levels from “1” through “5,” when use of patching and/or rerouting will hasten restoration;

(d) Seeking National Coordinating Center (NCC) assistance authorized under the NCC Charter; and

(e) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Executive Office of the President for resolution.

(3) Respond to provisioning requests of customers and/or other service vendors, and to restoration priority level assignments when an NSEP service suffers an outage or is reported as unusable, by:

(a) Ensuring that vendor personnel understand their responsibilities to handle NSEP provisioning requests and to restore NSEP service; and

(b) Providing a 24-hour point-of-contact for receiving provisioning requests for Emergency NSEP services and reports of NSEP service outages or unusability.

(c) Seek verification from an authorized entity if legitimacy of a priority level assignment or provisioning request for an NSEP service is in doubt. However, processing of Emergency NSEP service requests will not be delayed for verification purposes.

(4) Cooperate with other service vendors involved in provisioning or restoring a portion of an NSEP service by honoring provisioning or restoration priority level assignments, or requests for assistance to provision or restore NSEP services, as detailed in sections 6(f)(1), (2), and (3) above.

(5) All service vendors, including resale carriers, are required to ensure that service vendors supplying underlying facilities are provided information necessary to implement priority treatment of facilities that support NSEP services.

(6) Preempt, when necessary, existing services to provide an NSEP service as authorized in section 7 of this appendix.

(7) Assist in ensuring that priority level assignments of NSEP services are accurately identified “end-to-end” by:

(a) Seeking verification from an authorized Federal government entity if the legitimacy

of the restoration priority level assignment is in doubt;

(b) Providing to subcontractors and/or interconnecting carriers the restoration priority level assigned to a service;

(c) Supplying, to the Executive Office of the President, when acting as a prime contractor to a service user, confirmation information regarding NSEP service completion for that portion of the service they have contracted to supply;

(d) Supplying, to the Executive Office of the President, NSEP service information for the purpose of reconciliation.

(e) Cooperating with the Executive Office of the President during reconciliation.

(f) Periodically initiating reconciliation with their subcontractors and arranging for subsequent subcontractors to cooperate in the reconciliation process.

(8) Receive compensation for costs authorized through tariffs or contracts by:

(a) Provisions contained in properly filed state or Federal tariffs; or

(b) Provisions of properly negotiated contracts where the carrier is not required to file tariffs.

(9) Provision or restore only the portions of services for which they have agreed to be responsible (i.e., have contracted to supply), unless the President’s war emergency powers under section 706 of the Communications Act are in effect.

(10) Cooperate with the Executive Office of the President during audits.

(11) Comply with any regulations or procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President and reviewed by the FCC.

(12) Insure that at all times a reasonable number of public switched network services are made available for public use.

(13) Not disclose information concerning NSEP services they provide to those not having a need-to-know or might use the information for competitive advantage.

7. Preemption of Existing Services

When necessary to provision or restore NSEP services, service vendors may preempt services they provide as specified below. “User” as used in this Section means any user of a telecommunications service, including both NSEP and non-NSEP services. Prior consent by a preempted user is not required.

a. The sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority level “E” or restore NSEP services assigned a restoration priority level from “1” through “5”:

(1) Non-NSEP services: If suitable spare services are not available, then, based on the considerations in this appendix and the service vendor’s best judgment, non-NSEP services will be preempted. After ensuring a sufficient number of public switched services

are available for public use, based on the service vendor's best judgment, such services may be used to satisfy a requirement for provisioning or restoring NSEP services.

(2) NSEP services: If no suitable spare or non-NSEP services are available, then existing NSEP services may be preempted to provision or restore NSEP services with higher priority level assignments. When this is necessary, NSEP services will be selected for preemption in the inverse order of priority level assignment.

(3) Service vendors who are preempting services will ensure their best effort to notify the service user of the preempted service and state the reason for and estimated duration of the preemption.

b. Service vendors may, based on their best judgment, determine the sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority of "1" through "5". Preemption is not subject to the consent of the user whose service will be preempted.

8. Requests for Priority Assignments.

All service users are required to submit requests for priority actions through the Executive Office of the President in the format and following the procedures prescribed by that Office.

9. Assignment, Approval, Use, and Invocation of Priority Levels

a. *Assignment and approval of priority levels.* Priority level assignments will be based upon the categories and criteria specified in section 12 of this appendix. A priority level assignment made by the Executive Office of the President will serve as that Office's recommendation to the FCC. Until the President's war emergency powers are invoked, priority level assignments must be approved by the FCC. However, service vendors are ordered to implement any priority level assignments that are pending FCC approval.

After invocation of the President's war emergency powers, these requirements may be superseded by other procedures issued by the Executive Office of the President.

b. Use of Priority Level Assignments.

(1) All provisioning and restoration priority level assignments for services in the Emergency NSEP category will be included in initial service orders to vendors. Provisioning priority level assignments for Essential NSEP services, however, will not usually be included in initial service orders to vendors. NSEP treatment for Essential NSEP services will be invoked and provisioning priority level assignments will be conveyed to service vendors only if the vendors cannot meet needed service dates through the normal provisioning process.

(2) Any revision or revocation of either provisioning or restoration priority level as-

signments will also be transmitted to vendors.

(3) Service vendors shall accept priority levels and/or revisions only after assignment by the Executive Office of the President.

NOTE: Service vendors acting as prime contractors will accept assigned NSEP priority levels only when they are accompanied by the Executive Office of the President designated service identification, *i.e.*, TSP Authorization Code. However, service vendors are authorized to accept priority levels and/or revisions from users and contracting activities before assignment by the Executive Office of the President when service vendor, user, and contracting activities are unable to communicate with either the Executive Office of the President or the FCC. Processing of Emergency NSEP service requests will not be delayed for verification purposes.

c. *Invocation of NSEP treatment.* To invoke NSEP treatment for the priority provisioning of an NSEP telecommunications service, an authorized Federal official either within, or acting on behalf of, the service user's organization must make a written or oral declaration to concerned service vendor(s) and the Executive Office of the President that NSEP treatment is being invoked. Authorized Federal officials include the head or director of a Federal agency, commander of a unified/specified military command, chief of a military service, or commander of a major military command; the delegates of any of the foregoing; or any other officials as specified in supplemental regulations or procedures issued by the Executive Office of the President. The authority to invoke NSEP treatment may be delegated only to a general or flag officer of a military service, civilian employee of equivalent grade (e.g., Senior Executive Service member), Federal Coordinating Officer or Federal Emergency Communications Coordinator/Manager, or any other such officials specified in supplemental regulations or procedures issued by the Executive Office of the President. Delegates must be designated as such in writing, and written or oral invocations must be accomplished, in accordance with supplemental regulations or procedures issued by the Executive Office of the President.

10. Resubmission of Circuits Presently Assigned Restoration Priorities

All circuits assigned restoration priorities must be reviewed for eligibility for initial restoration priority level assignment under the provisions of this appendix. Circuits currently assigned restoration priorities, and for which restoration priority level assignments are requested under section 8 of this appendix, will be resubmitted to the Executive Office of the President. To resubmit such circuits, service users will comply with

applicable provisions of section 6(d) of this appendix.

11. Appeal

Service users or sponsoring Federal organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to the Executive Office of the President within 30 days of notification to the service user. The appellant must use the form or format required by the Executive Office of the President and must serve the FCC with a copy of its appeal. The Executive Office of the President will act on the appeal within 90 days of receipt. Service users and sponsoring Federal organizations may only then appeal directly to the FCC. Such FCC appeal must be filed within 30 days of notification of the Executive Office of the President's decision on appeal. Additionally, the Executive Office of the President may appeal any FCC revisions, approvals, or disapprovals to the FCC. All appeals to the FCC must be submitted using the form or format required. The party filing its appeal with the FCC must include factual details supporting its claim and must serve a copy on the Executive Office of the President and any other party directly involved. Such party may file a response within 20 days, and replies may be filed within 10 days thereafter. The Commission will not issue public notices of such submissions. The Commission will provide notice of its decision to the parties of record. Any appeals to the Executive Office of the President that include a claim of new information that has not been presented before for consideration may be submitted at any time.

12. NSEP TSP System Categories, Criteria, and Priority Levels

a. *General.* NSEP TSP System categories and criteria, and permissible priority level assignments, are defined and explained below.

(1) The Essential NSEP category has four subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; and Public Welfare and Maintenance of National Economic Posture. Each subcategory has its own criteria. Criteria are also shown for the Emergency NSEP category, which has no sub-categories.

(2) Priority levels of "1," "2," "3," "4," and "5" may be assigned for provisioning and/or restoration of Essential NSEP telecommunication services. However, for Emergency NSEP telecommunications services, a priority level "E" is assigned for provisioning. A restoration priority level from "1" through "5" may be assigned if an Emergency NSEP service also qualifies for such a restoration

priority level under the Essential NSEP category.

(3) The NSEP TSP System allows the assignment of priority levels to any NSEP telecommunications service across three time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. Priority levels will normally be assigned only for the first time period. These assigned priority levels will apply through the onset of any attack, but it is expected that they would later be revised by surviving authorized telecommunication resource managers within the Executive Office of the President based upon specific facts and circumstances arising during the Attack/War and Post-Attack/Recovery time periods.

(4) Service users may, for their own internal use, assign subpriorities to their services assigned priority levels. Receipt of and response to any such subpriorities is optional for service vendors.

(5) The following paragraphs provide a detailed explanation of the categories, subcategories, criteria, and priority level assignments, beginning with the Emergency NSEP category.

b. *Emergency NSEP.* Telecommunications services in the Emergency NSEP category are those new services so critical as to be required to be provisioned at the earliest possible time, without regard to the costs of obtaining them.

(1) *Criteria.* To qualify under the Emergency NSEP category, the service must meet criteria directly supporting or resulting from at least one of the following NSEP functions:

(a) Federal government activity responding to a Presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. 5122).

(b) State or local government activity responding to a Presidentially declared disaster or emergency.

(c) Response to a state of crisis declared by the National Command Authorities (e.g., exercise of Presidential war emergency powers under section 706 of the Communications Act.)

(d) Efforts to protect endangered U.S. personnel or property.

(e) Response to an enemy or terrorist action, civil disturbance, natural disaster, or any other unpredictable occurrence that has damaged facilities whose uninterrupted operation is critical to NSEP or the management of other ongoing crises.

(f) Certification by the head or director of a Federal agency, commander of a unified/specified command, chief of a military service, or commander of a major military command, that the telecommunications service is so critical to protection of life and property or to NSEP that it must be provided immediately.

(g) A request from an official authorized pursuant to the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.* and 18 U.S.C. 2511, 2518, 2519).

(2) *Priority Level Assignment.*

(a) Services qualifying under the Emergency NSEP category are assigned priority level "E" for provisioning.

(b) After 30 days, assignments of provisioning priority level "E" for Emergency NSEP services are automatically revoked unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

(c) For restoration, Emergency NSEP services may be assigned priority levels under the provisions applicable to Essential NSEP services (see section 12(c)). Emergency NSEP services not otherwise qualifying for restoration priority level assignment as Essential NSEP may be assigned a restoration priority level "5" for a 30-day period. Such 30-day restoration priority level assignments will be revoked automatically unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

c. *Essential NSEP.* Telecommunication services in the Essential NSEP category are those required to be provisioned by due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs. They may be assigned priority level of "1," "2," "3," "4," or "5" for both provisioning and restoration, depending upon the nature and urgency of the supported function, the impact of lack of service or of service interruption upon the supported function, and, for priority access to public switched services, the user's level of responsibility. Priority level assignments will be valid for no more than three years unless revalidated. To be categorized as Essential NSEP, a telecommunications service must qualify under one of the four following subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety and Maintenance of Law and Order; or Public Welfare and Maintenance of National Economic Posture. (NOTE Under emergency circumstances, Essential NSEP telecommunication services may be recategorized as Emergency NSEP and assigned a priority level "E" for provisioning.)

(1) *National security leadership.* This subcategory will be strictly limited to only those telecommunication services essential to national survival if nuclear attack threatens or occurs, and critical orderwire and control services necessary to ensure the rapid and efficient provisioning or restoration of other NSEP telecommunication services. Services in this subcategory are those for which a service interruption of even a few minutes would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must be at least one of the following:

- (i) Critical orderwire, or control service, supporting other NSEP functions.
- (ii) Presidential communications service critical to continuity of government and national leadership during crisis situations.
- (iii) National Command Authority communications service for military command and control critical to national survival.
- (iv) Intelligence communications service critical to warning of potentially catastrophic attack.
- (v) Communications service supporting the conduct of diplomatic negotiations critical to arresting or limiting hostilities.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority level "1" for provisioning and restoration during the Peace/Crisis/Mobilization time period.

(2) *National security posture and U.S. population attack warning.* This subcategory covers those minimum additional telecommunication services essential to maintaining an optimum defense, diplomatic, or continuity-of-government postures before, during, and after crises situations. Such situations are those ranging from national emergencies to international crises, including nuclear attack. Services in this subcategory are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

- (i) Threat assessment and attack warning.
- (ii) Conduct of diplomacy.
- (iii) Collection, processing, and dissemination of intelligence.
- (iv) Command and control of military forces.
- (v) Military mobilization.
- (vi) Continuity of Federal government before, during, and after crises situations.
- (vii) Continuity of state and local government functions supporting the Federal government during and after national emergencies.
- (viii) Recovery of critical national functions after crises situations.
- (ix) National space operations.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority level "2," "3," "4," or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

(3) *Public health, safety, and maintenance of law and order.* This subcategory covers the minimum number of telecommunication services necessary for giving civil alert to the U.S. population and maintaining law and order and the health and safety of the U.S.

population in times of any national, regional, or serious local emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP functions.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

- (i) Population warning (other than attack warning).
- (ii) Law enforcement.
- (iii) Continuity of critical state and local government functions (other than support of the Federal government during and after national emergencies).
- (vi) Hospitals and distributions of medical supplies.
- (v) Critical logistic functions and public utility services.
- (vi) Civil air traffic control.
- (vii) Military assistance to civil authorities.
- (viii) Defense and protection of critical industrial facilities.
- (ix) Critical weather services.
- (x) Transportation to accomplish the foregoing NSEP functions.

(b) *Priority level assignment.* Service under this subcategory will normally be assigned priority levels “3,” “4,” or “5” for provisioning and restoration during Peacetime/Crisis/Mobilization.

(4) *Public welfare and maintenance of national economic posture.* This subcategory covers the minimum number of telecommunications services necessary for maintaining the public welfare and national economic posture during any national or regional emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

- (i) Distribution of food and other essential supplies.
- (ii) Maintenance of national monetary, credit, and financial systems.
- (iii) Maintenance of price, wage, rent, and salary stabilization, and consumer rationing programs.
- (iv) Control of production and distribution of strategic materials and energy supplies.
- (v) Prevention and control of environmental hazards or damage.
- (vi) Transportation to accomplish the foregoing NSEP functions.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority levels “4” or “5” for provisioning and restoration during Peacetime/Crisis/Mobilization.

d. *Limitations.* Priority levels will be assigned only to the minimum number of tele-

communication services required to support an NSEP function. Priority levels will not normally be assigned to backup services on a continuing basis, absent additional justification, e.g., a service user specifies a requirement for physically diverse routing or contracts for additional continuity-of-service features. The Executive Office of the President may also establish limitations upon the relative numbers of services which may be assigned any restoration priority level. These limitations will not take precedence over laws or executive orders. Such limitations shall not be exceeded absent waiver by the Executive Office of the President.

e. *Non-NSEP services.* Telecommunication services in the non-NSEP category will be those which do not meet the criteria for either Emergency NSEP or Essential NSEP.

[53 FR 47536, Nov. 23, 1988; 54 FR 152, Jan. 4, 1989; 54 FR 1471, Jan. 13, 1989, as amended at 67 FR 13229, Mar. 21, 2002]

APPENDIX B TO PART 64—PRIORITY ACCESS SERVICE (PAS) FOR NATIONAL SECURITY AND EMERGENCY PREPAREDNESS (NSEP)

1. AUTHORITY

This appendix is issued pursuant to sections 1, 4(i), 201 through 205 and 303(r) of the Communications Act of 1934, as amended. Under these sections, the Federal Communications Commission (FCC) may permit the assignment and approval of priorities for access to commercial mobile radio service (CMRS) networks. Under section 706 of the Communications Act, this authority may be superseded by the war emergency powers of the President of the United States. This appendix provides the Commission’s Order to CMRS providers and users to comply with policies and procedures establishing the Priority Access Service (PAS). This appendix is intended to be read in conjunction with regulations and procedures that the Executive Office of the President issues:

(1) To implement responsibilities assigned in section 3 of this appendix, or

(2) For use in the event this appendix is superseded by the President’s emergency war powers. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priority access service both before and after invocation of the President’s emergency war powers.

2. BACKGROUND

a. *Purpose.* This appendix establishes regulatory authorization for PAS to support the needs of NSEP CMRS users.

b. *Applicability.* This appendix applies to the provision of PAS by CMRS licensees to

users who qualify under the provisions of section 5 of this appendix.

c. *Description.* PAS provides the means for NSEP telecommunications users to obtain priority access to available radio channels when necessary to initiate emergency calls. It does not preempt calls in progress and is to be used during situations when CMRS network congestion is blocking NSEP call attempts. PAS is to be available to authorized NSEP users at all times in equipped CMRS markets where the service provider has voluntarily decided to provide such service. Authorized users would activate the feature on a per call basis by dialing a feature code such as *XX. PAS priorities 1 through 5 are reserved for qualified and authorized NSEP users, and those users are provided access to CMRS channels before any other CMRS callers.

d. *Definitions.* As used in this appendix:

1. *Authorizing agent* refers to a Federal or State entity that authenticates, evaluates and makes recommendations to the Executive Office of the President regarding the assignment of priority access service levels.

2. *Service provider* means an FCC-licensed CMRS provider. The term does not include agents of the licensed CMRS provider or resellers of CMRS service.

3. *Service user* means an individual or organization (including a service provider) to whom or which a priority access assignment has been made.

4. The following terms have the same meaning as in Appendix A to Part 64:

- (a) Assignment;
- (b) Government;
- (c) National Communications System;
- (d) National Coordinating Center;
- (e) National Security Emergency Preparedness (NSEP) Telecommunications Services (excluding the last sentence);
- (f) Reconciliation;
- (g) Revalidation;
- (h) Revision;
- (i) Revocation.

e. *Administration.* The Executive Office of the President will administer PAS.

3. RESPONSIBILITIES

a. The *Federal Communications Commission* will provide regulatory oversight of the implementation of PAS, enforce PAS rules and regulations, and act as final authority for approval, revision, or disapproval of priority assignments by the Executive Office of the President by adjudicating disputes regarding either priority assignments or the denial thereof by the Executive Office of the President until superseded by the President's war emergency powers under Section 706 of the Communications Act.

b. The *Executive Office of the President (EOP)* will administer the PAS system. It will:

1. Act as the final approval or denial authority for the assignment of priorities and the adjudicator of disputes during the exercise of the President's war emergency powers under section 706 of the Communications Act.

2. Receive, process, and evaluate requests for priority actions from authorizing agents on behalf of service users or directly from service users. Assign priorities or deny requests for priority using the priorities and criteria specified in section 5 of this appendix. Actions on such requests should be completed within 30 days of receipt.

3. Convey priority assignments to the service provider and the authorizing agent.

4. Revise, revalidate, reconcile, and revoke priority level assignments with service users and service providers as necessary to maintain the viability of the PAS system.

5. Maintain a database for PAS related information.

6. Issue new or revised regulations, procedures, and instructional material supplemental to and consistent with this appendix regarding the operation, administration, and use of PAS.

7. Provide training on PAS to affected entities and individuals.

8. Enlarge the role of the Telecommunications Service Priority System Oversight Committee to include oversight of the PAS system.

9. Report periodically to the FCC on the status of PAS.

10. Disclose content of the NSEP PAS database only as may be required by law.

c. An *Authorizing agent* shall:

1. Identify itself as an authorizing agent and its community of interest (State, Federal Agency) to the EOP. State Authorizing Agents will provide a central point of contact to receive priority requests from users within their state. Federal Authorizing Agents will provide a central point of contact to receive priority requests from federal users or federally sponsored entities.

2. Authenticate, evaluate, and make recommendations to the EOP to approve priority level assignment requests using the priorities and criteria specified in section 5 of this appendix. As a guide, PAS authorizing agents should request the lowest priority level that is applicable and the minimum number of CMRS services required to support an NSEP function. When appropriate, the authorizing agent will recommend approval or deny requests for PAS.

3. Ensure that documentation is complete and accurate before forwarding it to the EOP.

4. Serve as a conduit for forwarding PAS information from the EOP to the service user and vice versa. Information will include PAS requests and assignments, reconciliation and revalidation notifications, and other information.

5. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

6. Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP.

7. Disclose content of the NSEP PAS database only to those having a need-to-know.

d. *Service users* will:

1. Determine the need for and request PAS assignments in a planned process, not waiting until an emergency has occurred.

2. Request PAS assignments for the lowest applicable priority level and minimum number of CMRS services necessary to provide NSEP telecommunications management and response functions during emergency/disaster situations.

3. Initiate PAS requests through the appropriate authorizing agent. The EOP will make final approval or denial of PAS requests and may direct service providers to remove PAS if appropriate. (Note: State and local government or private users will apply for PAS through their designated State government authorizing agent. Federal users will apply for PAS through their employing agency. State and local users in states where there has been no designation will be sponsored by the Federal agency concerned with the emergency function as set forth in Executive Order 12656. If no authorizing agent is determined using these criteria, the EOP will serve as the authorizing agent.)

4. Submit all correspondence regarding PAS to the authorizing agent.

5. Invoke PAS only when CMRS congestion blocks network access and the user must establish communications to fulfill an NSEP mission. Calls should be as brief as possible so as to afford CMRS service to other NSEP users.

6. Participate in reconciliation and revalidation of PAS information at the request of the authorizing agent or the EOP.

7. Request discontinuance of PAS when the NSEP qualifying criteria used to obtain PAS is no longer applicable.

8. Pay service providers as billed for PAS.

9. Comply with regulations and procedures that are issued by the EOP which are supplemental to and consistent with this appendix.

e. *Service providers* who offer any form of priority access service for NSEP purposes shall provide that service in accordance with this appendix. As currently described in the Priority Access and Channel Assignment Standard (IS-53-A), service providers will:

1. Provide PAS levels 1, 2, 3, 4, or 5 only upon receipt of an authorization from the EOP and remove PAS for specific users at the direction of the EOP.

2. Ensure that PAS system priorities supersede any other NSEP priority which may be provided.

3. Designate a point of contact to coordinate with the EOP regarding PAS.

4. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

5. As technically and economically feasible, provide roaming service users the same grade of PAS provided to local service users.

6. Disclose content of the NSEP PAS database only to those having a need-to-know or who will not use the information for economic advantage.

7. Comply with regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP.

8. Insure that at all times a reasonable amount of CMRS spectrum is made available for public use.

9. Notify the EOP and the service user if PAS is to be discontinued as a service.

f. The *Telecommunications Service Priority Oversight Committee* will identify and review any systemic problems associated with the PAS system and recommend actions to correct them or prevent their recurrence.

4. APPEAL

Service users and authorizing agents may appeal any priority level assignment, denial, revision or revocation to the EOP within 30 days of notification to the service user. The EOP will act on the appeal within 90 days of receipt. If a dispute still exists, an appeal may then be made to the FCC within 30 days of notification of the EOP's decision. The party filing the appeal must include factual details supporting its claim and must provide a copy of the appeal to the EOP and any other party directly involved. Involved parties may file a response to the appeal made to the FCC within 20 days, and the initial filing party may file a reply within 10 days thereafter. The FCC will provide notice of its decision to the parties of record. Until a decision is made, the service will remain status quo.

5. PAS PRIORITY LEVELS AND QUALIFYING CRITERIA

The following PAS priority levels and qualifying criteria apply equally to all users and will be used as a basis for all PAS assignments. There are five levels of NSEP priorities, priority one being the highest. The five priority levels are:

1. Executive Leadership and Policy Makers
2. Disaster Response/Military Command and Control
3. Public Health, Safety and Law Enforcement Command
4. Public Services/Utilities and Public Welfare
5. Disaster Recovery

These priority levels were selected to meet the needs of the emergency response community and provide priority access for the command and control functions critical to management of and response to national security

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and emergency situations, particularly during the first 24 to 72 hours following an event. Priority assignments should only be requested for key personnel and those individuals in national security and emergency response leadership positions. PAS is not intended for use by all emergency service personnel.

A. Priority 1: Executive Leadership and Policy Makers.

Users who qualify for the Executive Leadership and Policy Makers priority will be assigned priority one. A limited number of CMRS technicians who are essential to restoring the CMRS networks shall also receive this highest priority treatment. Examples of those eligible include:

(i) The President of the United States, the Secretary of Defense, selected military leaders, and the minimum number of senior staff necessary to support these officials;

(ii) State governors, lieutenant governors, cabinet-level officials responsible for public safety and health, and the minimum number of senior staff necessary to support these officials; and

(iii) Mayors, county commissioners, and the minimum number of senior staff to support these officials.

B. Priority 2: Disaster Response/Military Command and Control

Users who qualify for the Disaster Response/Military Command and Control priority will be assigned priority two. Individuals eligible for this priority include personnel key to managing the initial response to an emergency at the local, state, regional and federal levels. Personnel selected for this priority should be responsible for ensuring the viability or reconstruction of the basic infrastructure in an emergency area. In addition, personnel essential to continuity of government and national security functions (such as the conduct of international affairs and intelligence activities) are also included in this priority. Examples of those eligible include:

(i) Federal emergency operations center coordinators, e.g., Manager, National Coordinating Center for Telecommunications, National Interagency Fire Center, Federal Coordinating Officer, Federal Emergency Communications Coordinator, Director of Military Support;

(ii) State emergency Services director, National Guard Leadership, State and Federal Damage Assessment Team Leaders;

(iii) Federal, state and local personnel with continuity of government responsibilities;

(iv) Incident Command Center Managers, local emergency managers, other state and local elected public safety officials; and

(v) Federal personnel with intelligence and diplomatic responsibilities.

C. Priority 3: Public Health, Safety, and Law Enforcement Command

Users who qualify for the Public Health, Safety, and Law Enforcement Command priority will be assigned priority three. Eligible for this priority are individuals who direct operations critical to life, property, and maintenance of law and order immediately following an event. Examples of those eligible include:

(i) Federal law enforcement command;

(ii) State police leadership;

(iii) Local fire and law enforcement command;

(iv) Emergency medical service leaders;

(v) Search and rescue team leaders; and

(vi) Emergency communications coordinators.

D. Priority 4: Public Services/Utilities and Public Welfare

Users who qualify for the Public Services/Utilities and Public Welfare priority will be assigned priority four. Eligible for this priority are those users whose responsibilities include managing public works and utility infrastructure damage assessment and restoration efforts and transportation to accomplish emergency response activities. Examples of those eligible include:

(i) Army Corps of Engineers leadership;

(ii) Power, water and sewage and telecommunications utilities; and

(iii) Transportation leadership.

E. Priority 5: Disaster Recovery

Users who qualify for the Disaster Recovery priority will be assigned priority five. Eligible for this priority are those individuals responsible for managing a variety of recovery operations after the initial response has been accomplished. These functions may include managing medical resources such as supplies, personnel, or patients in medical facilities. Other activities such as coordination to establish and stock shelters, to obtain detailed damage assessments, or to support key disaster field office personnel may be included. Examples of those eligible include:

(i) Medical recovery operations leadership;

(ii) Detailed damage assessment leadership;

(iii) Disaster shelter coordination and management; and

(iv) Critical Disaster Field Office support personnel.

6. LIMITATIONS

PAS will be assigned only to the minimum number of CMRS services required to support an NSEP function. The Executive Office of the President may also establish limitations upon the relative numbers of services that may be assigned PAS or the total number of PAS users in a serving area. These

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limitations will not take precedence over laws or executive orders. Limitations established shall not be exceeded.

[65 FR 48396, Aug. 8, 2000]

AUTHORITY: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 218, 219, 220, 403.

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

Subpart A—General

Subpart A—General

Sec.

65.1 Application of part 65.

§ 65.1 Application of part 65.

(a) This part establishes procedures and methodologies for Commission prescription of an authorized unitary interstate exchange access rate of return and individual rates of return for the interstate exchange access rates of certain carriers pursuant to § 65.102. This part shall apply to those interstate services of local exchange carriers as the Commission shall designate by rule or order, except that all local exchange carriers shall provide to the Commission that information which the Commission requests for purposes of conducting prescription proceedings pursuant to this part.

(b) Local exchange carriers subject to §§ 61.41 through 61.49 of this chapter are exempt from the requirements of this part with the following exceptions:

(1) Except as otherwise required by Commission order, carriers subject to §§ 61.41 through 61.49 of this chapter shall employ the rate of return value calculated for interstate access services in complying with any applicable rules under parts 36 and 69 that require a return component;

(2) Carriers subject to §§ 61.41 through 61.49 of this chapter shall be subject to § 65.600(d);

(3) Carriers subject to §§ 61.41 through 61.49 of this chapter shall continue to comply with the prescribed rate of return when offering any services specified in § 61.42(f) of this chapter unless the Commission otherwise directs; and

(4) Carriers subject to §§ 61.41 through 61.49 of this chapter shall comply with Commission information requests made pursuant to § 65.1(a).

[60 FR 28543, June 1, 1995]

Subpart B—Procedures

§ 65.100 Participation and acceptance of service designation.

(a) All interstate exchange access carriers, their customers, and any member of the public may participate

Subpart B—Procedures

65.100 Participation and acceptance of service designation.

65.101 Initiation of unitary rate of return prescription proceedings.

65.102 Petitions for exclusion from unitary treatment and for individual treatment in determining authorized return for interstate exchange access service.

65.103 Procedures for filing rate of return submissions.

65.104 Page limitations for rate of return submissions.

65.105 Discovery.

Subpart C—Exchange Carriers

65.300 Calculations of the components and weights of the cost of capital.

65.301 Cost of equity.

65.302 Cost of debt.

65.303 Cost of preferred stock.

65.304 Capital structure.

65.305 Calculation of the weighted average cost of capital.

65.306 Calculation accuracy.

65.450 Net income.

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65.500 Net income.

Subpart E—Rate of Return Reports

65.600 Rate of return reports.

Subpart F—Maximum Allowable Rates of Return

65.700 Determining the maximum allowable rate of return.

65.701 Period of review.

65.702 Measurement of interstate service earnings.

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65.800 Rate base.

65.810 Definitions.

65.820 Included items.

65.830 Deducted items.